



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

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Director General
Marketplace Framework Policy Branch
Industry Canada
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Re: Industry Canada Consultation on the *Canada Business Corporations Act* (the “Consultation”)

This submission is made by the Pension Investment Association of Canada (“PIAC”) in response to the Consultation which was issued by Industry Canada on December 11, 2013. The Consultation invites comments on whether amendments to the *Canada Business Corporations Act* (the “CBCA”) are required with respect to various topics.

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over \$1 trillion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

We are pleased that Industry Canada is conducting public consultations on a variety of areas of the CBCA to assist in modernizing the statute. We provide the following comments in respect of the issues that are of the most concern to our members.

Executive Compensation

(a) Industry Canada asked for public comment on shareholder advisory votes on compensation packages.

Where it comes to the adoption of a mandatory shareholder advisory vote on executive compensation, Canada is arguably lagging other developed markets that have federally mandated advisory votes including the U.S., the EU and Australia. The U.K. and Switzerland have recently approved amendments that make the vote binding.

PIAC endorses an annual advisory vote on executive compensation to provide shareholders with the opportunity to express their views on the board's approach to executive compensation and recommends that the CBCA require an annual advisory "say on pay" vote for all public companies governed by the CBCA.

Shareholder Rights - Voting

(a) Industry Canada asked for public comment on mandatory voting by ballot at shareholder meetings and disclosure of the voting results by public companies.

PIAC supports mandatory voting by ballot on all matters at shareholder meetings as well as the public disclosure of detailed reporting of the voting of all matters listed on the ballot. Even when a matter is approved, it is helpful for shareholders to know the level of support on the matter. PIAC accordingly supports mandatory disclosure of vote results.

(b) Industry Canada asked for public comment on individual elections of directors and "slate voting."

The CBCA currently permits slate voting, whereby shareholders are required to vote for the group of nominee directors on an "all or none" basis. The practice of slate voting does not give shareholders the right to approve or disapprove of individual nominees, and therefore prevents meaningful choices for shareholders.

This is a very important issue which PIAC recommends be addressed. Accordingly, PIAC strongly requests that the CBCA be amended to prohibit slate voting and require mandatory election of individual directors. This would bring the CBCA in line with the applicable Toronto Stock Exchange requirements (the "TSX Requirements"), which prohibit slate voting.

(c) Industry Canada asked for public comment on maximum one year terms and annual elections for directors.

The CBCA currently permits director terms of up to three years and permits a "staggered" board of directors. These practices prevent director accountability to shareholders and protect the board from shareholder intervention where intervention may be beneficial to the corporation.

PIAC endorses CBCA amendments that would require maximum one year terms and annual elections for directors. This would bring the CBCA in line with the TSX Requirements, which currently require annual elections of directors.

PIAC notes the recent proposed amendments to the TSX Requirements, which, when effective, would require director elections by majority vote. This is discussed further below.

(d) Industry Canada asked for public comment on director election by majority vote.

PIAC applauds Industry Canada for considering the important issue of director election by majority vote.

PIAC strongly recommends amending the CBCA to require director election by a majority vote of all shareholders; this will improve accountability of directors to shareholders. Requiring majority voting for directors will bring the CBCA in line with the recent proposed amendments to the TSX Requirements, which are to be effective on June 30, 2014.

The proposed amendments to the TSX Requirements require each director of a TSX-listed issuer, other than of a majority controlled issuer, to be elected by a majority of the votes cast with respect to his or her election other than at contested meetings.

PIAC strongly supports harmonization of the CBCA with the TSX Requirements on this issue.

(e) Industry Canada asked for public comment on “overvoting” of voting rights attached to corporate shares and “empty voting” by shareholders without an economic interest in the corporation.

PIAC is committed to addressing concerns regarding the integrity and reliability of the proxy voting infrastructure, and endorses amendments that would effect this outcome.

In November 2013, PIAC submitted a response to the request for comments by the Canadian Securities Administrators (the “CSA”) regarding CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure*, published on August 15, 2013. A copy of this response letter is attached for ease of reference.

PIAC asks Industry Canada to review this submission, as it discusses PIAC’s comments on this important topic.

Shareholder and Board Communication

(a) Industry Canada asked for public comment on electronic meetings for public companies.

PIAC supports technological advancement in shareholder communication and endorses the right to attend shareholder meetings electronically. However, PIAC does not support CBCA amendments which would allow public companies to limit shareholder meetings to electronic-only formats. PIAC strongly supports the ability of shareholders to communicate directly with corporate management, which would be detrimentally affected by any changes that diminish the requirement to have public shareholder meetings.

(b) Industry Canada asked for public comment on facilitation of “notice and access” provisions under the CBCA.

“Notice and access” provisions would allow corporations to post documents, such as meeting and proxy materials, on company websites for shareholders to download.

Currently, Ontario securities legislation allows reporting issuers (other than investment funds) to use this means of communication with specific content and timing requirements.

PIAC strongly supports amendments to the CBCA which would permit the use of “notice and access” for shareholders, as it facilitates convenience and speed in communications between reporting issuers and their shareholders.

(c) Industry Canada asked for public comment on access to a proxy circular by “significant” shareholders (more than 5-percent share ownership).

PIAC is of the view that the cost of preparing and distributing a dissident proxy circular is prohibitive and hinders the ability of shareholders to nominate alternative directors.

PIAC accordingly supports amendments to the CBCA which would allow access to proxy circulars by significant shareholders. However, PIAC is of the view that the suggested 5% ownership threshold is too high and urges Industry Canada to consider a lower share ownership level.

(d) Industry Canada asked for public comment on equal treatment of shareholders in the proxy process, irrespective of shareholder privacy concerns.

PIAC members feel strongly about the protection of shareholder information and anonymity and therefore support the obligation of public corporations to send proxy related material to all of their shareholders under the condition that the OBO-NOBO distinction pursuant to National Instrument 54-101 is strictly respected.

(e) Industry Canada asked for public comment on shareholder proposal provisions, including the filing deadline and reasonable time to speak to a proposal at an annual meeting.

Currently, the CBCA requires qualifying shareholders to notify the corporation of a matter proposed for consideration at the annual meeting at least *ninety* days before the anniversary date of the *notice date* for the previous annual meeting. This deadline is difficult to meet and negatively affects the ability of shareholders to make proposals.

The *Ontario Business Corporations Act* (the “OBCA”) deadline for shareholder proposals is more reasonable than that of the CBCA. It requires shareholders to notify the corporation of a matter proposed for consideration at the annual meeting at least *sixty* days before the anniversary date of the *last annual meeting*.

PIAC supports harmonizing the deadline for filing shareholder proposals in the CBCA with the provincial approach, such as the OBCA.

Second, PIAC urges Industry Canada to increase the 500-word limit of a shareholder's supporting statement for his or her proposal in the management proxy circular. PIAC asks that Industry Canada canvas other jurisdictions to determine a reasonable word limit. PIAC notes that the ability of a company to respond to a shareholder proposal in a management circular is unlimited.

Third, PIAC asks that the CBCA be amended so that shareholders are specifically provided with a reasonable amount of time at the shareholder meeting to speak to their proposal.

Shareholder Rights - Board Accountability

(a) Industry Canada asked for public comment on the roles of the Chief Executive Officer (the "CEO") and the Chair of the Board (the "Chair").

The CBCA is currently silent with respect to whether the CEO can be the same individual as the Chair. This is a very important issue that PIAC wishes to have addressed. PIAC strongly requests that amendments be made to the CBCA to ensure that at publicly listed companies the CEO and the Chair are not the same individual, and also to ensure that the Chair be an independent director.

(b) Industry Canada asked for public comment on shareholder approval of significantly dilutive acquisitions.

PIAC endorses the concept of requiring shareholder approval of significantly dilutive acquisitions.

The TSX Requirements currently require security holder approval where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

PIAC is content to leave the regulation of this area with the TSX and accordingly does not recommend changes to the CBCA.

(c) Industry Canada asked for public comment on disclosure of the board's understanding of social and environmental matters on corporate operations.

Given their decision-making and oversight responsibilities, the board of directors should have thorough knowledge and understanding of all material matters that impact or potentially impact their company's operations including matters related to environmental, social, and governance (ESG) issues to the extent that they are material. Disclosure of reporting made at the board level on all material risks and potential operational impacts to the company, such as those required by National Instrument 51-102, as well as any policies describing the board's accountability in this regard would benefit shareholders by

helping them to better understand how the board is monitoring and managing these issues.

We encourage Industry Canada to review emerging practices in ESG disclosure to further inform their view in this evolving field. International initiatives such as the Sustainability Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), the International Accounting Standards Board (IASB) and the International Integrated Reporting Council (IIRC) are examples of organizations working to build and align standards on ESG disclosure.

Corporate Governance and Combating Bribery and Corruption

(a) Industry Canada asked for public comment on the adequacy of existing CBCA provisions on corporate records, accounting standards and audits to combat bribery in international transactions.

PIAC strongly endorses regulatory efforts to combat bribery and corruption on a uniform basis, both domestically and internationally. This is an important issue worthy of further action. We expect companies to establish and ensure the effectiveness of internal controls, ethics, and compliance programs or measures for preventing and detecting bribery and corruption in their business transactions.

PIAC urges Industry Canada to review what other countries have done to address the Organization for Economic Co-Operation and Development (OECD) Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions released in December 2009.

Diversity of Corporate Boards and Management

(a) Industry Canada asked for public comment on whether new measures to promote diversity within corporate boards should be included in the CBCA and what such measures might entail.

PIAC commends Industry Canada for considering the important issue of the diversity of corporate boards and management.

PIAC notes the recent proposals made by the Ontario Securities Commission (the "OSC") on this issue. In January 2014, the OSC released proposed amendments to Form 58-101F1 *Corporate Governance Disclosure*. The proposed amendments would require greater transparency with respect to the representation of women on boards and in senior management of all TSX-listed and other non-venture issuers reporting in Ontario. Issuers would be required to provide the requested disclosure or explain why such targets or policies are omitted from their disclosure.

PIAC generally supports these proposed amendments from the OSC rather than amending the CBCA, with the caveat that Industry Canada should monitor the results and take action if no positive change is realized from the OSC proposals.

Corporate Social Responsibility

(a) Industry Canada asked for public comment on whether the existing provisions of the CBCA adequately support corporate social responsibility objectives and whether additional measures are warranted.

PIAC agrees with the view that the promotion of corporate social responsibility (“CSR”) principles and practices would have benefits for Canadian businesses and investors. Section 122(a) requires every director and officer of a company incorporated under the CBCA to “act honestly and in good faith with a view to the best interests of the corporation.” It is PIAC’s view that this does not preclude directors from considering the interests of outside stakeholders including employees, creditors, suppliers, consumers, community members, governments and the environment.

Conclusion

Thank you again for this opportunity to comment on the Consultation. Please do not hesitate to contact Katharine Preston, Acting Chair of the Corporate Governance Committee (416-681-2944, kpreston@optrust.com), if you wish to discuss any aspect of this letter in further detail.

Yours sincerely,



Michael Keenan
Chair